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**MAR - 3 2005**

DIRECTOR OFFICE  
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In re Application of: Estakhri et al.  
Application No. 10/647,084  
Attorney Docket No. LEXA-00206  
Filed: August 21, 2003  
For: FLASH MEMORY CARD WITH  
ENHANCED OPERATING MODE  
DETECTION AND USER-FRIENDLY  
INTERFACING SYSTEM

)  
) **DECISION ON PETITION TO**  
) **MAKE SPECIAL UNDER 37 C.F.R.**  
) **§1.102 and M.P.E.P. §708.02(II)**  
)  
)

This decision is in response to the petition filed April 16, 2004 under 37 CFR §1.102(d), requesting to make special of the above-identified application in view of M.P.E.P. §708.02(II): Infringement.

The petition is **DISMISSED**.

M.P.E.P. §708.02, Section II, which sets out the prerequisites for a grantable petition for Accelerated Examination under 37 C.F.R. §1.102(d), states in relevant part:

A new application (one which has not received any examination by the examiner) may be granted special status provided that applicant (and this term includes applicant's attorney or agent) complies with each of the following items:

Subject to a requirement for a further showing as may be necessitated by the facts of a particular case, an application may be made special because of actual infringement (but not for prospective infringement) upon payment of the fee under 37 CFR 1.17(h) and the filing of a petition accompanied by a statement by the applicant, assignee, or an attorney/agent registered to practice before the Office alleging:

- (A) That there is an infringing device or product actually on the market or method in use;
- (B) That a rigid comparison of the alleged infringing device, product, or method with the claims of the application has been made, and that, in his or her opinion, some of the claims are unquestionably infringed; and
- (C) That he or she has made or caused to be made a careful and thorough search of the prior art or has a good knowledge of the pertinent prior art.

Applicant must provide one copy of each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record. Models or

specimens of the infringing product or that of the application should not be submitted unless requested.

Petitioner's submission, filed April 16, 2004, contains 1) a statement signed by one of the inventors, and 2) a statement signed by the attorney of record. Both statements, and therefore the petition, fail to meet the criteria set out with respect to alleged infringement in M.P.E.P. §708.02, Section II.

With respect to the first statement, signed by one of the inventors, it is noted that there are two inventors. Note that M.P.E.P. §708.02, Section II states, in relevant part, that "... *and the filing of a petition accompanied by a statement by the **applicant**, assignee, or an attorney/agent...*". **The execution of the petition is improper because the statement has not been not signed by both inventors.**

The second statement, signed by the attorney of record, also fails to meet the criteria set out with respect to alleged infringement in M.P.E.P. §708.02, Section II. In particular, the Petitioner has not stated *that there is an infringing device or product actually on the market or method in use*. Petitioner has only stated that "*Products, marketed and sold by **numerous companies** infringe claims...*". Thus, the statement is deficient in that it does not refer to an **actual product**, but rather to some **class of products**. It therefore follows that the statement is also deficient because "...*a rigid comparison of the alleged infringing device, product, or method with the claims of the application...*" would have been impossible. Therefore, Petitioner's submission, filed April 16, fails to meet the criteria set out with respect to alleged infringement in M.P.E.P. §708.02, Section II.

Accordingly, the Petition is **DISMISSED**.

Petitioner is given one opportunity to perfect the petition. Any request for reconsideration must be filed within TWO MONTHS of the mail date of this decision.

Until the renewed petition is submitted, the application will be returned to the examiner's docket to await treatment on the merits in the normal order of examination.



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